

REMARKS

Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and/or the following remarks. By this Response, Applicants have amended claim 124 to correct a minor typographical error. Applicants submit that support for the amendment may be found throughout the originally filed specification, drawings, and claims and that no new matter has been added by way of this Response. Claims 110-116, 118-127 and 129-131 are currently pending in the application.

Rejection Under 35 USC § 103(a)

The Examiner has rejected claims 110-116, 118-127 and 129-131 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher et al. (US 5,835,896; hereinafter, "Fisher") in view of Walker et al. (US 5,794,207; hereinafter "Walker"). Applicants respectfully traverse the Examiner's rejection and submit that a prima facie case of obviousness has not been established.

In the September 22, 2008 Advisory Action, the Examiner alleges with regard to the instant application that, "since it is a continuation in part the applicant need to show evidence that the claimed subject matter was in the original filed application in order for the art to be considered not valid as a prior art." Applicants disagree and respectfully traverse. MPEP § 2141.01(I) prescribes that, "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date." In other words, the reference must qualify as prior art under some subsection of 35 U.S.C. § 102 in order to be applied as a reference in a rejection under 35 U.S.C. § 103. Applicants are unclear as to under which statutory category of 35 U.S.C. § 102 the Examiner believes Walker qualifies as prior art for the purposes of maintaining the rejection under 35 U.S.C. § 103. Applicants

submit that Walker does not qualify as prior art under 35 U.S.C. § 102(a), which requires that the invention be known or used by others. Applicants submit that Walker also does not qualify as prior art under 35 U.S.C. § 102(b), as the instant application is a continuation of and claims priority to prior U.S. Patent Application serial no. 08/889,319, filed July 8, 1997, which is not more than one year after the publication of Walker. Accordingly, Applicants submit that the instant application is afforded at least the parent's priority date of July 8, 1997. Applicants submit that even if, in *arguendo*, Walker did qualify as prior art under 35 U.S.C. § 102(e), which Applicants expressly assert that it does not, that it would be disqualified as a reference for an obviousness rejection in accordance with the exception provided under 35 U.S.C. § 103(c), inasmuch as Walker and the instant application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Accordingly, Applicants submit that a *prima facie* showing of obviousness has not been made and respectfully request reconsideration and withdrawal of this basis of rejection. Should the Examiner maintain the rejection, Applicants respectfully request further clarification as to under which section of 35 U.S.C. § 102 the Examiner believes Walker qualifies as prior art with respect to the instant application.

Applicants further note that support for the claim elements in question may be found throughout the originally filed specification, drawings, and claims of the instant application. By way of non-limiting example only, Applicants direct the Examiner's attention to p. 2 line 34 to p. 3 line 15; p. 18 line 26 to p. 20 line 2; p. 25 line 26 to p. 27 line 31; Figs. 10a-c; and Fig. 17a-b of the specification in the instant application. Further support may be found elsewhere and throughout the originally filed specification, drawings and claims.

Accordingly, for at least these reasons, Applicants respectfully request reconsideration and withdrawal of this basis of rejection.

CONCLUSION

Consequently, the reference(s) cited and/or any official notice taken by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicants respectfully submit that the supporting remarks and claimed inventions, claims 110-116, 118-127 and 129-131, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicants do not concede that any such elements are found in the prior art and/or within any official notice taken in the office action, and as such, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art, including any official notice taken in the office action, and explicitly reserve the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure,

functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT1.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT1.

Respectfully submitted,
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